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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,558	07/29/2003	Donald E. Weder	8403.945	7480
30589	7590	11/01/2004	EXAMINER	
DUNLAP, CODDING & ROGERS P.C. PO BOX 16370 OKLAHOMA CITY, OK 73113			GELLNER, JEFFREY L	
		ART UNIT		PAPER NUMBER
		3643		

DATE MAILED: 11/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/630,558	WEDER ET AL.	
	Examiner Jeffrey L. Gellner	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 30 September 2004.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-11 is/are pending in the application.  
 4a) Of the above claim(s) 3,4 and 6 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,2,5 and 7-11 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____.  | 6) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

Acknowledgement is made of Applicant's IDS received 29 July 2003. Examiner is in the process of obtaining the listed foreign patent documents. A signed 1449 will accompany the next office action.

### ***Election/Restrictions***

Applicant's election of Species combination I-B in the reply filed on 30 September 2004 is acknowledged. Because Applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 3,4, and 6 are withdrawn from examination.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5, 7, and 11 are rejected under 35 U.S.C. §102(b) as being anticipated by Edwards (US 3,543,438).

As to Claims 1 and 2, Edwards discloses a growing tray (Figs. 1-3) comprising a porous self-supporting holding material (Fig. 3) having at least two predetermined uniform size growing subunits (see Fig. 1), the porous holding material further having upper and lower sides (Figs. 1-3), an outer surface (Figs. 1-3) and an interior; means for supporting and reinforcing (12 of Figs.

1-3) the at least two predetermined uniform size growing subunits and disposed within the subunits (when the outer irrigant is applied); and, an irrigant impermeable coating layer (col. 4 lines 15-19)substantially covering and integrated into the outer peripheral surface of the porous holding material.

As to Claims 5 and 7, Edwards et al. further discloses a means for passing an irrigant being a channel (region above P in Figs. 2).

As to Claim 11, Edwards et al. further discloses the irrigant impermeable coating layer to include a glazed layer (Examiner considers the “suitable binders” of Edwards at col. 4 lines 15-19 to possess a glazed layer when applied.)

#### *Claim Rejections - 35 USC §103*

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-10 are rejected under 35 U.S.C. §103(a) as being unpatentable over Edwards (US 3,543,438) in view of Adams et al. (US 3,467,609).

As to Claims 8 and 9, the limitations of Claim 1 are disclosed as described above. Not disclosed is a cavity for a growing subunit with a botanical item. Adams et al. however discloses a tray with a cavity (11 of Fig. 1) for a growing subunit of predetermined sized with a botanical item. It would have been obvious to one of ordinary skill in the art at the time of the invention to

modify the tray of Edwards by adding cavities of predetermined sized so as to find a use in planting cuttings (see Adams et al. at col. 3 lines 31-35).

As to Claim 10, Edwards as modified by Adams et al. further disclose a means for fertilizing (region above P in Fig. 2 of Edwards; the region can be used to both water and fertilize).

***Conclusion***

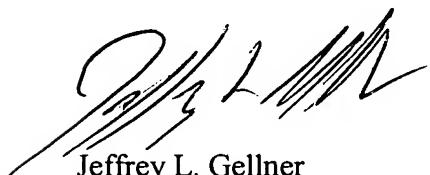
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Clawson, Shannon et al., Greene, McKenzie, Brehm, Tardy, Ingerstedt, and Tadaki disclose in the prior art various growing trays with porous self-supporting holding material. Rack, Waldenmeire, Andresen et al., and Eychenne disclose in the prior art various growing trays/pots with impermeable coating layers. Weder et al. ('177 A1) discloses the instant application's pre-grant publication.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner  
Primary Examiner